

SENATE BILL 1039

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Title 71, relative to elderly and
vulnerable adults.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Elderly and Vulnerable Adult Protection Act of 2019."

SECTION 2. Tennessee Code Annotated, Section 39-15-501, is amended by inserting the following appropriately designated subdivisions:

() "Abuse" means the infliction of physical harm;

() "Sexual exploitation" means an act committed upon or in the presence of an elderly or vulnerable adult, without that adult's effective consent, for purposes of sexual gratification. "Sexual exploitation" includes but is not limited to fondling, exposure of genitals to an elderly or vulnerable adult, exposure of sexual acts to an elderly or vulnerable adult, or exposure of an elderly or vulnerable adult's sexual organs. "Sexual exploitation" does not include any act intended for a valid medical purpose, or any act reasonably intended to be a normal caregiving act, such as bathing by appropriate persons at appropriate times;

SECTION 3. Tennessee Code Annotated, Section 39-15-501(6)(C), is amended by deleting the subdivision and substituting instead the following:

The act of obtaining or exercising control over an elderly or vulnerable adult's property, without receiving the elderly or vulnerable adult's effective consent, by a caregiver committed with the intent to benefit the caregiver or other third party;

SECTION 4. Tennessee Code Annotated, Section 39-15-501(7)(A)(ii), is amended by deleting the subdivision and substituting instead the following:

(ii) The failure of a caregiver to make a reasonable effort to protect an elderly or vulnerable adult from abuse, sexual exploitation, neglect, or financial exploitation by others;

SECTION 5. Tennessee Code Annotated, Section 39-15-506(a)(1), is amended by deleting the language "Following a conviction for a violation of § 39-15-502, § 39-15-507(a)-(c) or § 39-15-508" and substituting instead the language "Following a conviction for a violation of § 39-15-502, § 39-15-507(b)-(c), § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512".

SECTION 6. Tennessee Code Annotated, Section 39-15-506(b)(1), is amended by deleting the language "In addition to any other punishment that may be imposed for a violation of § 39-15-502, § 39-15-507, or § 39-15-508" and substituting instead the language "In addition to any other punishment that may be imposed for a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512".

SECTION 7. Tennessee Code Annotated, Section 39-15-507(a), is amended by deleting the language "willfully and".

SECTION 8. Tennessee Code Annotated, Section 39-15-509(a)(1), is amended by deleting the language "suffering or has suffered neglect or financial exploitation" and substituting instead the language "suffering or has suffered abuse, sexual exploitation, neglect, or financial exploitation".

SECTION 9. Tennessee Code Annotated, Section 39-15-509(c), is amended by deleting the language "knowingly fail to report neglect or financial exploitation" and substituting instead the language "knowingly fail to report abuse, sexual exploitation, neglect, or financial exploitation".

SECTION 10. Tennessee Code Annotated, Section 39-15-509(e), is amended by deleting the language "commencement of criminal prosecution of neglect or financial

exploitation" and substituting instead the language "commencement of criminal prosecution of abuse, sexual exploitation, neglect, or financial exploitation".

SECTION 11. Tennessee Code Annotated, Section 39-15-509(f), is amended by deleting the language "alleging neglect or financial exploitation" and substituting instead the language "alleging abuse, sexual exploitation, neglect, or financial exploitation".

SECTION 12. Tennessee Code Annotated, Title 39, Chapter 15, Part 5, is amended by adding the following language as new sections:

39-15-510.

(a) It is an offense for a person to knowingly abuse an elderly or vulnerable adult.

(b) The offense of abuse of an elderly adult is a Class E felony.

(c) The offense of abuse of a vulnerable adult is a Class D felony.

39-15-511.

(a) A person commits the offense of aggravated abuse of an elderly or vulnerable adult who knowingly commits abuse pursuant to § 39-15-510, and:

(1) The act results in serious physical harm;

(2) A deadly weapon is used to accomplish the act or the abuse involves strangulation as defined in § 39-13-102; or

(3) The abuse results in serious bodily injury.

(b) A violation of subdivision (a)(1) is a Class C felony.

(c) A violation of subdivision (a)(2) or subdivision (a)(3) is a Class B felony.

39-15-512.

(a) It is an offense for any person to knowingly sexually exploit an elderly adult or vulnerable adult.

(b) A violation of this section is a Class A misdemeanor.

SECTION 13. Tennessee Code Annotated, Section 71-6-124, is amended by deleting the section and substituting instead the following:

(a)

(1)

(A) Any relative, conservator, agent or employee of the Tennessee commission on aging and disability, or attorney ad litem, having personal knowledge that an adult has been the subject of a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, or that such adult is threatened with or placed in fear of a violation of any of those sections, may seek relief for the adult pursuant to this section by filing a sworn petition with any court having jurisdiction under this part alleging that the respondent has violated or threatens to violate § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, regardless of the existence of any other remedy at law.

(B) The petition must allege facts, based upon personal knowledge of the petitioner, that the adult either lacks the capacity to consent or that appearing in court to petition on the adult's own behalf would pose an undue burden on the adult.

(C) An elderly or vulnerable adult, who has been the subject of a violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, or has been threatened with or placed in fear of a violation of any of those sections, may seek relief pursuant to this section by filing a sworn petition with any court having jurisdiction under this part alleging that the respondent has violated or threatens to violate § 39-15-

502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512, regardless of the existence of any other remedy at law.

(D) Notwithstanding subdivisions (a)(1)(A) and (C), and for good cause shown, the court may issue an ex parte order of protection pursuant to this section upon a sworn petition filed by a law enforcement officer responding to an incident involving an elderly or vulnerable adult victim who asserts in the petition reasonable grounds to believe that the adult is in immediate and present danger of abuse, neglect, financial exploitation, or sexual exploitation as defined in § 39-15-501, and that the adult either has consented to the filing or lacks the capacity to consent; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection is considered the petitioner for purposes of this section.

(i) The law enforcement officer may seek on behalf of the adult the ex parte order regardless of the time of day and regardless of whether an arrest has been made.

(ii) If an ex parte order is issued pursuant to this section outside of the court's normal operating hours, the law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as practicable after issuance, but no later than two (2) business days after issuance; and

(iii) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

(E) Venue for a petition for an order of protection, and all other matters relating to orders of protection, is in the county where the respondent resides or the county in which the violation of § 39-15-502, § 39-15-507, § 39-15-508, § 39-15-510, § 39-15-511, or § 39-15-512 occurred or is threatened to occur. If the respondent is not a resident of this state, the petition may be filed in the county where the adult resides.

(2)

(A) Pursuant to subdivision (a)(1)(A), the court may enter an immediate ex parte order of protection against the respondent if the petition alleges upon personal knowledge of the petitioner, and the court finds in its ex parte order, that the adult lacks capacity to consent or that the adult lacks the ability to be present to petition on their own behalf and is in immediate danger of abuse, neglect, financial exploitation, or sexual exploitation.

(B) Pursuant to subdivision (a)(1)(C), the court may enter an immediate ex parte order of protection against the respondent if the court finds in its ex parte order that the elderly adult is in immediate danger of abuse, neglect, financial exploitation, or sexual exploitation.

(C) Pursuant to subdivision (a)(1)(D), the court may enter an immediate ex parte order of protection against the respondent if the court finds in its ex parte order that the elderly adult is in immediate and present danger of abuse, neglect, financial exploitation, or sexual exploitation, and that the adult has either consented to the filing or lacks the capacity to consent.

(3) The petition and any ex parte order issued pursuant to this section shall be personally served upon the respondent, and if filed pursuant to subdivision (a)(1)(A) or (a)(1)(D), upon the adult. If the respondent is not a resident of this state, the ex parte order must be served pursuant to §§ 20-2-215 and 20-2-216.

(4) Written notice of the filing of the petition and copies of the petition and the ex parte order of protection against the respondent, if any, shall be sent by the clerk of the court to the adult protective services unit in the county office of the department of human services in the county where the petition is filed. The department has the right to intervene in the proceeding, but shall not otherwise be required to initiate any legal action as a result of such notice. The department may, at any time, file a petition pursuant to § 71-6-107 if it determines that the adult who is the subject of a petition for an order of protection is in need of protective services.

(5)

(A) Within fifteen (15) days of service of an ex parte order of protection against the respondent, a hearing must be held, at which time the court shall either dissolve any ex parte order that has been issued, or shall, if the petitioner has proven the allegations made pursuant to subdivision (a)(1)(A), subdivision (a)(1)(C), or subdivision (a)(1)(D), by a preponderance of the evidence, extend the order of protection for a definite period of time, not to exceed one (1) year, unless a further hearing on the continuation of such order is requested by the adult, the respondent, or the petitioner; in which case, on proper showing of cause, such order may be continued for a further definite period of one (1) year.

(B) Any ex parte order of protection shall be in effect until the time of the hearing and, if the hearing is held within fifteen (15) days of service of such order, the ex parte order continues in effect until the entry of any subsequent order of protection, proceedings under title 34, chapters 1-3, are concluded, or the order of protection is dissolved. If no ex parte order of protection has been issued as of the time of the hearing, and the petitioner has proven the allegations made pursuant to subdivision (a)(1)(A), subdivision (a)(1)(C), or subdivision (a)(1)(D) by a preponderance of the evidence, the court may, at that time, issue an order of protection for a definite period of time, not to exceed one (1) year.

(C) The court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as a copy of any ex parte order of protection, to be served upon the respondent, and if filed pursuant to subdivision (a)(1)(A) or subdivision (a)(1)(D), upon the adult at least three (3) days prior to such hearing. Such notice shall advise the respondent and the adult that each may be represented by counsel. The court may appoint a guardian ad litem under § 34-1-107.

(D) Within the time the order of protection is in effect, any court with jurisdiction under this part may modify the order of protection, either upon the court's own motion or upon motion of the adult, the respondent, or the petitioner.

(b) An order of protection granted pursuant to this section may:

(1) Order the respondent to refrain from committing a violation of this part or title 39, chapter 15, part 5 against an adult;

(2) Order the respondent to refrain from threatening to misappropriate or further misappropriating any moneys, state or federal benefits, retirement funds, or any other personal or real property belonging to the adult;

(3) Order the return to the adult, the adult's caretaker, conservator, or other fiduciary any moneys, state or federal benefits, retirement funds, or any other personal or real property belonging to the adult obtained by the respondent as result of exploitation of the adult or as result of any other misappropriation of such funds or property of the adult by the respondent. The court may enter judgment against the respondent for the repayment or return to the adult or the adult's caretaker, conservator, or other fiduciary of any moneys, government benefits, retirement funds, or any other personal or real property belonging to the adult that are under the control of or that have been obtained by the respondent as result of exploitation or misappropriation from the adult. Nothing in this subdivision (b)(3) shall preclude an action under § 71-6-120. The court may, if the amount in question exceeds ten thousand dollars (\$10,000), require any caretaker or custodian of funds appointed under this section to post a bond as required by § 34-1-105;

(4) Enjoin the respondent from providing care for an adult, or working in any situation involving the care of an adult, whether such action occurs in an institutional setting, in any type of group home or foster care arrangement serving adults, and regardless of whether such person, facility, or arrangement serving adults is licensed to provide care for adults;

(5) Prohibit the respondent from telephoning, contacting, or otherwise communicating with the adult, directly or indirectly; and

(6) Subject to the limitations otherwise stated in this section, grant any other relief deemed necessary by the court to protect an adult.

(c) All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year. The court may modify its order at any time upon subsequent motion filed by any party together with an affidavit showing a change in circumstances sufficient to warrant the modification. The petitioner, respondent, adult, or the court on its own motion may commence a proceeding under title 34, chapters 1-3 to determine whether a fiduciary or conservator should be appointed, if any party alleges that the conditions giving rise to the order of protection continue or may continue beyond the one (1) year.

(d)

(1) If the respondent and the adult have been served with a copy of the petition filed pursuant to subdivision (a)(1)(A) or subdivision (a)(1)(D) and notice of hearing, the order of protection is effective when the order is entered. For purposes of this subdivision (d)(1), an order is considered entered once a hearing is conducted and such order is signed by:

(A) The judge and all parties or counsel;

(B) The judge and one (1) party or counsel and the order contains a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel; or

(C) The judge and the order contains a certificate of the clerk that a copy has been served on all other parties or counsel.

(2) Service upon a party or counsel must be made by delivering to such party or counsel a copy of the order of protection, or by the clerk mailing it to the party's last known address. In the event the party's last known address is

unknown and cannot be ascertained upon diligent inquiry, the certificate of service must so state. Service by mail is complete upon mailing.

(3) If the respondent and the adult have been served with a copy of the petition filed pursuant to subdivision (a)(1)(A) or subdivision (a)(1)(D) and notice of hearing, an order of protection issued pursuant to this part after a hearing shall be in full force and effect against the respondent from the time it is entered, regardless of whether the respondent is present at the hearing.

(4) A copy of any order of protection and any subsequent modifications or dismissal must be issued by the clerk of the court to the petitioner, the respondent, and the local law enforcement agencies having jurisdiction in the area where the adult resides. Upon receipt of the copy of the order of protection or dismissal from the issuing court or clerk's office, the local law enforcement agency shall take any necessary action to immediately transmit it to the national crime information center.

(5) Upon violation of an order of protection entered pursuant to this section, a court may order any appropriate punishment or relief as provided for in § 36-3-610.

(e)

(1) It is an offense to knowingly violate an order of protection issued pursuant to this section. A law enforcement officer may arrest a respondent who is the subject of an order of protection issued pursuant to this section with or without warrant.

(2) In order to constitute a violation of this section:

(A) The person must have received notice of the request for an order of protection;

(B) The person must have had an opportunity to appear and be heard in connection with the order of protection or restraining order; and

(C) The court must have made specific findings of fact in the order of protection that the person committed a violation of this part.

(3) Any law enforcement officer shall arrest the respondent without a warrant if:

(A) The officer has proper jurisdiction over the area in which the violation occurred;

(B) The officer has reasonable cause to believe the respondent has violated or is in violation of an order of protection; and

(C) The officer has verified that an order of protection is in effect against the respondent. If necessary, the law enforcement officer may verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement department.

(4) Any person arrested for a violation of an order of protection entered pursuant to this section shall be treated as a person arrested for a violation of an order of protection issued pursuant to title 36, chapter 3, part 6.

(5) A violation of this subsection (e) is a Class A misdemeanor, and any sentence imposed is to be served consecutively to the sentence for any other offense that is based in whole or in part on the same factual allegations, unless the sentencing judge or magistrate specifically orders the sentences for the offenses arising out of the same facts to be served concurrently.

(f) Notwithstanding § 71-6-102, for purposes of this section:

(1) "Abuse, neglect, or exploitation" includes:

(A) Abuse, neglect, and exploitation, as those terms are defined in § 71-6-102; and

(B) Abuse, neglect, financial exploitation, and sexual exploitation, as those terms are defined in § 39-15-501; and

(2) "Adult" means an adult as defined in § 71-6-102 or an elderly adult or vulnerable adult as those terms are defined in § 39-15-501.

SECTION 14. Tennessee Code Annotated, Section 40-35-313(a)(1)(B)(i)(c), is amended by deleting the language "§ 39-15-502, § 71-6-117, § 71-6-119, or § 39-15-508" and substituting instead the language "§ 39-15-502, § 39-15-508, § 39-15-511, or § 39-15-512".

SECTION 15. Tennessee Code Annotated, Section 40-35-313(a)(3)(A), is amended by deleting the language "a violation of § 39-15-507 or § 71-6-117 on or after July 1, 2018" and substituting instead the language "a violation of § 39-15-507 on or after January 1, 2019, or § 39-15-510 on or after July 1, 2019".

SECTION 16. Tennessee Code Annotated, Sections 71-6-117 and 71-6-119, are deleted in their entireties.

SECTION 17. Tennessee Code Annotated, Section 71-6-125(d), is amended by deleting the language "By December 1 of each year" and substituting instead the language "By January 31 of the following year".

SECTION 18. For the purposes of promulgating rules required by this act, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2020, the public welfare requiring it.